

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 389 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
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DEPUTY ENGINEER (T)

Versus

ANAND PLASTIC INDUSTRIES

Appearance:

1. Appeal from Order No. 389 of 1995
MR D.R.DAVE for MR AD OZA for Petitioner No. 1
MR TUSHAR MEHTA for Petitioner No. 2-3
MR HRIDAY BUCH for MR ND NANAVATI for Respdt. No. 1
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CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 11/09/2001

ORAL JUDGEMENT

1. The appellants have challenged in this Appeal common order dated 24.10.1994 passed by the learned 2nd Joint Civil Judge (SD), Junagadh, below Exh.5 and Exh.26

in Special civil Suit No.97 of 1994 whereby the learned trial Judge partly allowed the application Ex.5 on condition that the plaintiff should deposit 50 % of the amount mentioned in mark 4/3 i.e. Rs.4,80,002.54 ps. within 3 days from the date of order with the Defendant Gujarat Electricity Board.

2. It was stated at the bar by the learned Counsel Shri Hriday Buch appearing for the respondent that conditional order passed by the learned trial Judge was complied with the respondent - original plaintiff and 50 per cent amount was deposited as ordered by the trial Court.

3. Learned Counsel Shri D.R.Dave, appearing for the appellant vehemently submitted that the learned trial Judge was wholly wrong in entertaining the application Ex.5 and passing conditional order in favour of the respondent - original plaintiff. He submitted that there is alternative remedy available to the respondent plaintiff before the appellate Committee. Therefore, Civil Court jurisdiction was impliedly barred. He, therefore, submitted that when the learned trial Judge has no jurisdiction to entertain the Suit then the impugned order passed by the learned Judge in favour of the plaintiff should be quashed and set aside. In support of his submission he has placed reliance upon 2 Supreme Court judgments, i.e. (1) PUNJAB STATE ELECTRICITY COMPANY V/S. ASHWANIKUMAR, REPORTED IN 1997 (5) SCC 120 & (2) HAIDRABAD VANASPATI LTD. V/S. ANDHRA PRADESH ELECTRICITY BOARD, REPORTED IN 1998 (4) SCC 470.

4. It may be stated that the impugned order which is challenged in this Appeal was passed way back on 24.10.1994. If this Appeal had come up for hearing immediately thereafter then perhaps this Court would have gone into the aforesaid question raised by the learned Counsel for the appellant, but after lapse of almost 7 years I am not inclined to go into that question and decide it at this stage. More particularly Civil Application No.3503 of 1995 filed in this Appeal from Order was already dismissed by the learned Single Judge way back on 8.5.1997. It is true that the said Civil Application was rejected by the learned Judge by this Court on the ground that allowing the said application means allowing the Appeal before its effective hearing. However, it was stated at the bar that the hearing of Suit had already commenced way back in 1997 and therefore the papers were already called for from the counsel of the respondent - original plaintiff. In that view of the matter most probably by now the Suit must have been

decided and if it is not decided then the same is likely to be decided soon.

5. Under the circumstances without going into legality and validity of the impugned order passed by the learned trial Judge I am of the considered opinion that this Appeal can be disposed of by giving suitable direction to the learned trial Judge.

6. Accordingly this Appeal is disposed of with direction to the learned trial Judge to dispose of Special Civil Suit No.97 of 1994, if it is not so far disposed of, as early as possible, preferably on or before 28.2.2002. Present Appellant - original defendant can very well raise the aforesaid contention regarding jurisdiction before the learned Judge. I am sure that as and when such contention is raised the learned Judge will decide the same after considering the aforesaid 2 judgments of the Supreme Court. With this observation this Appeal from Order is disposed of.

sd/-

Date : September 11, 2001 (B.J.Shethna, J.)

sas